



Office of the Attorney General
State of Texas

December 3, 1997

DAN MORALES
ATTORNEY GENERAL

Mr. S. Stephen Hilmy
Gary, Thomasson, Hall & Marks
210 S. Carancahua
P.O. Box 2888
Corpus Christi, Texas 78403

OR97-2633

Dear Mr. Hilmy:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 110731.

You represent Del Mar College (the "college"). The college received a request from an employee to release to her and to her attorney a variety of information pertaining to the employee and her grievances. You indicate that the information requested has been provided to the requestor. However, you submitted certain information to this office that you indicate is not responsive to the request for information. You also assert that the information at issue is protected from disclosure pursuant to sections 552.101, 552.102, and 552.111 of the Government Code.

One of the items of information submitted is a short, hand-written notation from notes taken during an investigation of the employee's complaints. You indicate that all of the handwritten notes except for this excerpt are responsive to the request and that all the notes except for this redacted portion were released to the requestor. The other document is a page from a memorandum. You state that several of the pages of the memorandum seemed responsive to the request and were released to the requestor, but that this page is not responsive to the request. We note initially that the college has an obligation to make a good faith effort to locate records that are responsive to an open records request. Open Records Decision No. 561 (1990) at 8. The college appears to have done this. However, the college is not obligated to provide to the requestor information that is not responsive to the request. Thus, if the college determines that the submitted information is not responsive to this request, it does not have to provide that information or to seek a ruling from this office. However, assuming that the college has determined that the submitted information is responsive to the request, we will consider the exceptions raised.

You assert that the redacted portion from the hand-written notes is excepted from disclosure pursuant to the common-law privacy aspects of section 552.101 and 552.102. The

test to determine whether information is protected by common-law privacy under either section 552.101 or section 552.102 is whether the information is (1) highly intimate or embarrassing to a reasonable person, and (2) of no legitimate public concern. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 930 (1977); *Hubert v. Harte-Hanks Tex. Newspapers Inc.*, 652 S.W.2d 546 (Tex. App. - Austin 1983, writ ref'd n.r.e.). Generally, when records relate to the job performance, work behavior, and compensation of a public servant, there is a valid public interest in this information. Open Records Decision Nos. 470 (1987) at 4 (public has legitimate interest in job performance of public employees), 423 (1984) at 2 (scope of public employee privacy is narrow). We have reviewed the excerpt from the hand-written notes. The information at issue is intimate and embarrassing and does not appear to pertain to any work-related function or to be of any legitimate public interest.¹ Thus, the excerpt at issue in the hand-written notes is confidential and may not be disclosed.


The other item submitted to this office was a page from a memorandum. You assert that the information at issue is protected from disclosure under section 552.101 of the Government Code, in conjunction with section 21.355 of the Government Code. Section 552.101 provides an exception from disclosure for information made confidential by law. Section 21.355 of the Education Code provides that "[A] document evaluating the performance of a teacher or administrator is confidential." However, section 21.355 is a part of subchapter H of the Education Code, which sets forth the appraisal processes that relate to the accountability of public schools providing compulsory public education. We believe that subchapter H is applicable only to public school districts. Section 21.355 does not protect from disclosure the document at issue.

You also assert that the page from the memorandum is protected from disclosure pursuant to section 552.111 of the Government Code. Section 552.111 excepts from disclosure interagency or intra-agency communications "consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body." Open Records Decision No. 615 (1993) at 5. In Open Records Decision No. 631 (1995) at 3, this office stated that "the policymaking functions of a governmental body include advice, recommendations, and opinions regarding administrative and personnel matters of broad scope that affect the governmental body's policy mission." However, section 552.111 does not protect from disclosure information pertaining solely to the internal administration of a governmental body. *Id.* The page from the memorandum does not appear to be related to a personnel or administrative matter of broad scope affecting the governmental body's policy mission. The page may not be withheld from disclosure pursuant to section 552.111.

¹We note that common-law privacy does not provide a basis for withholding information from the subject of the protected information. Open Records Decision No. 481 (1987). However, in this situation the requestor is not the subject of the protected information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a long horizontal stroke extending to the right.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 110731

Enclosures: Submitted documents

cc: Mr. David Hughes
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(w/o enclosures)